

WILLIAM A. MUNDELL
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COMMISSIONER



BRIAN C. McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

October 25, 2002

OCT 25 2002

FCC-MARHOOD

Marlene H. Dortch
Secretary
Federal Communications Commission
Room 222 – Stop Code 1170
1919M Street, N.W.
Washington, D.C. 20554

Re: Telecommunications Carriers – Use of Customer Proprietary Network Information;
CC Docket No. 96-115

Dear Ms. Dortch:

On October 21, 2002, the Arizona Corporation Commission electronically filed a Petition For Clarification and/or Reconsideration. Attached is a corrected Service List. Through oversight, copies of the Petition was not mailed to Janice Myles or Qualex International on October 21, 2002. Copies of the Petition were sent overnight mail to both parties on October 23, 2002. The attached Service List reflects this new date of service.

I apologize for any inconvenience this may have caused.

Sincerely

A handwritten signature in black ink that reads "Maureen Scott".

Maureen A. Scott
Attorney, Legal Division
(602)542-3402

MAS:daa
cc: Janice Myles
Qualex International

No. of Copies rec'd
List ABOVE A handwritten mark, possibly a signature or initials, next to the text.

CERTIFICATE OF SERVICE

I do hereby certify that on this 21st day of October, 2002, I electronically filed the PETITION FOR CLARIFICATION AND/OR RECONSIDERATION OF THE ARIZONA CORPORATION COMMISSION with:

Marlene H. Dortch
Secretary
Federal Communications Commission
Room 222-Stop Code 1170
1919 M Street, N.W.
Washington, D.C. 20554

I also certify that on October 23, 2002, I served a copy of the PETITION FOR CLARIFICATION AND/OR RECONSIDERATION OF THE ARIZONA CORPORATION COMMISSION, by sending a true and correct copy of same via Federal Express, to the parties listed below:

Janice Myles
Common Carrier Bureau
Federal Communications Commission
1919 M. Street, Room 544
Washington, D.C. 20544

Qualex International
The Portals, 445 12th Street, S.E
Room CY-BO2
Washington, D.C. 20554

/s/ Maureen A. Scott

Maureen A. Scott

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the)	
Telecommunications Act of 1996:)	
)	
Telecommunications Carriers' Use of)	CC Docket No. 96-115
Customer Proprietary Network)	
Information And Other Customer)	
Information;)	
)	
Implementation of the Non-Accounting)	CC Docket No. 96-149
Safeguards of Sections 271 and 272 of the)	
Communications Act of 1934, As)	
Amended)	
)	
2000 Biennial Regulatory Review –)	CC Docket No. 00-257
Review of Policies and Rules Concerning)	
Unauthorized Changes of Consumers')	
Long Distance Carriers)	

THE ARIZONA CORPORATION COMMISSION'S
PETITION FOR CLARIFICATION AND/OR RECONSIDERATION

On July 25, 2002, the Federal Communications Commission ("FCC") released its Third Report and Order¹ in the above-captioned Dockets. In its Third Report and Order, the FCC resolved several issues in connection with carriers' use of customer proprietary network information ("CPNI") pursuant to section 222 of 1996 Act. More specifically, the FCC adopted an approach that it believes comports with the decision of the United States Court of Appeals for the Tenth Circuit which vacated the FCC's

¹ In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, CC Docket Nos. 96-115, 96-149, Third Report and Order and Third Further Notice of Proposed Rulemaking, FCC 93-27 (rel. Feb. 26, 1998)(Third Report and Order).

requirement that carriers obtain express customer consent for all sharing of CPNI between a carrier and its affiliates, and unaffiliated entities. Pursuant to Section 1.429 of the FCC's Rules, the Arizona Corporation Commission ("ACC") hereby requests that the FCC clarify and/or reconsider its Third Report and Order in this proceeding, in the one respect described below

The ACC supports the FCC's decision to allow States to adopt more stringent approval requirements than those adopted by the FCC. In doing so, the FCC acknowledged that States may develop different records should they choose to examine the use of CPNI for intrastate services, and may find further evidence of harm, or less evidence of burden on protected speech interests. Accordingly, the FCC has chosen not to apply an automatic presumption that more stringent State rules will be preempted. The ACC supports this change in policy on the FCC's part and concurs with the FCC that it is appropriate given the FCC's new rules which permit carriers to use an "opt-out" approval mechanism in some instances.

The ACC is concerned that the FCC has gone too far, however, in allowing for disclosure of CPNI to any unrelated third-parties, even under an "opt-in" regime. Section 222(c)(2) requires express written authorization by a customer before a carrier may disclose CPNI to a third party. That Section provides:

(2) DISCLOSURE ON REQUEST BY CUSTOMERS – a telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer.

Customer approval under Section 222(c)(1) requires at a minimum that the customer's consent be knowing and informed. It would be difficult, if not impossible, to adequately inform the customer *of* all of the potential disclosures that could occur under a policy which allowed disclosure to any unrelated third-party. Without adequate information about who is to receive his/her CPNI in the future and for what purpose, the customer cannot be said to make a knowing and informed decision about its release,

Notice to the customer can adequately identify instances where there is a legitimate business relationship between the customer and the third-party, such as in the case of an agent acting on behalf of the telecommunications carrier, or where the customer has selected a new telecommunications provider, so that the customer is adequately informed to whom his CPNI is going to be released and for what purpose. Beyond these types of disclosures to third-parties, the ACC is concerned that a customer's consent (under either opt-out or opt-in) may not be either knowing or informed. A customer has a right under the provisions of 47 U.S.C. Section 222 to know who will receive his or her proprietary account information and for what purpose.

The FCC's approach in its Third Report and Order appears to create a situation where once having given opt-in consent, the consumer has no knowledge of who will receive his or her proprietary information. The ACC is concerned that such a situation leaves the door open for inappropriate, unknown, harmful, and unexpected disclosure of CPNI. The ACC understands that in Arizona, telecommunications carriers do not release CPNI, especially calling patterns or information to any unrelated third parties not providing telecommunications services. The ACC believes that this important protection must be maintained.

In summary, allowing for unlimited release of CPNI to any unrelated third parties, even under an "opt-in" policy, is overly broad given the express wording of Section 222(c)(2). The FCC should clarify and/or reconsider its policies in this regard to ensure that no unintended or inappropriate disclosures of private customer account information occur.

CONCLUSION

For the foregoing reasons, the Commission should reconsider and clarify its Third Report and Order in this Docket as set forth above.

RESPECTFULLY SUBMITTED this 21st day of October, 2002

/s/ Maureen A. Scott

Maureen **A.** Scott
Attorney, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
Telephone: (602) 542-6022

Attorneys for the Arizona Corporation Commission

CERTIFICATE OF SERVICE

I do hereby certify that I have this 21st day of October, 2002, served all parties to this action with a copy of the foregoing PETITION FOR CLARIFICATION AND/OR RECONSIDERATION by placing a true and correct copy of same in the United States Mail, postage prepaid, addressed to the parties listed below:

Janice Myles
Common Carrier Bureau
Federal Communications Commission
1919 M Street, Room 544
Washington, D.C. 20554 *via Federal Express*

Marlene H. Dortch
Secretary
Federal Communications Commission
Room 222 – Stop Code 1170
1919 M Street, N.W.
Washington, D.C. 20553 *electronic filing + federal Express*

Qualex International
The Portals, 445 12th Street, S.E
Room CY-B02
Washington, D.C. 20554 *via federal Express*

/s/ Maureen A. Scott

Maureen A. Scott